

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Chapter 13
)	Case No. 15-61913
Audra Mae Wilson,)	
)	Judge Russ Kendig
)	
)	
)	MOTION TO
Debtors.)	AVOID LIEN

Now comes Debtors, Audra Wilson, by and through the undersigned counsel, and hereby moves the Court to avoid the second mortgage held by CitiFinancial against the Debtors' residential real property. In accordance with 11 U.S.C. §§ 506, 1322(b)(2), and authoritative case law, Debtor moves to avoid the second mortgage as a wholly unsecured lien and pay the balance owing the lien holder with the general unsecured creditors.

Property Description:

The subject property is located at 4151 Bay Road SE Carrollton OH 44615. The 1,404 square foot manufactured home is positioned on a 5 acre lot. The permanent parcel number for the property is 17-0000110.001.

Legal Description:

See Attached Exhibit A.

Ownership Interests:

Debtor is the fee owner of said property pursuant to a Warranty Deed recorded with the Carroll County Recorder on January 21, 1999.

Statement of Value:

The appraisal commissioned by the Chapter 13 Trustee is attached as Exhibit B. The appraiser valued the subject property at \$60,000. The evaluation was based on an inspection of the property and sales comparisons from the neighborhood.

Statement of Lien Interests:

First Priority Lien: The first mortgage, recorded on December 8, 2008, is held by Nationstar, whose claim is for approximately \$65,000.00 according to the statement received prior to filing. Instrument # 200800004790.

Second Priority: The second mortgage, recorded on May 31, 2007, is held by CitiFinancial. The mortgage company's claim is for \$40,836.53. Instrument # 200700002655. This mortgage was subject to a subordination agreement that was recorded on November 5, 2010 with the First mortgage. Instrument Number 201000004293.

The Debtors Chapter 13 plan provided that the mortgage lien of Citifinancial was to be avoided. There is insufficient equity in the Debtors real estate to secure the mortgage lien of Citifinancial. In accordance with 11 U.S.C. §§ 506, and 1322, the lien is a wholly unsecured junior lien. Therefore, the lien is subject to avoidance.

Wherefore, Debtor requests the Court enter an order avoiding the mortgage lien held by Citifinancial.; deem the claim to be unsecured and payable as a general unsecured claim; order release of the lien within sixty (60) days of completion of payments under Debtor's Chapter 13 plan and receiving a discharge; and provide such further provide relief as is appropriate and just.

Submitted by:

/s/Nicole L. Rohr
Nicole L. Rohr (0078316)
Thrush & Rohr L.L.C.
4410 22nd Street NW
Canton, Ohio 44708
(330) 479-9494
(330) 479-9585 *fax*
Counsel for Debtor

**UNITED STATES BANKRUPTCY COURT
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In re:)	Chapter 13
)	Case No.15-61913
Audra Mae Wilson)	Judge Russ Kendig
)	
)	
Debtors.)	

NOTICE OF MOTION TO AVOID LIENS

Debtors Audra Mae Wilson has filed papers with the court to avoid the mortgage lien held by Citifinancial.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have any attorney, you may wish to consult one.)

If you do not want the court to avoid the liens, or if you want the court to consider your views on the motion, then on or before **November 26, 2015**, you or your attorney must:

File with the court a written response, explaining your position, and request a hearing, at:
**U.S. Bankruptcy Court,
Ralph Regula U.S. Courthouse,
401 McKinley Ave SW, Canton, OH 44702**

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date state above.

You must also mail a copy to:

Nicole L. Rohr
Thrush & Rohr, L.L.C.
4410 22nd Street NW
Canton, Ohio 44708

Toby L. Rosen
Office of the Chapter 13 Trustee
400 W. Tuscarawas Ave., Suite 400
Canton, Ohio 44702

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: November 5, 2015

Signature: /s/Nicole L. Rohr
Name: Nicole L. Rohr
4410 22nd Street NW
Canton, Ohio 44708

CERTIFICATE OF SERVICE

I, Nicole Rohr, hereby certify that a true and accurate copy of the foregoing was sent by regular US Mail, postage prepaid, this 5th day of November, 2015 to the following individuals:

Audra Wilson 4151 Bay Road SE Carrollton OH 44615

Citifinancial c/o Manley Deas Kochalski LLC PO Box 165028 Columbus OH 43216

I, Nicole Rohr, hereby certify that a true and accurate copy of the foregoing was electronically transmitted on or about November 5, 2015 to the following who are listed on the Court's Electronic Mail Notice List:

- Toby L Rosen lweir@chapter13canton.com
- United States Trustee (Registered address)@usdoj.gov

/s/Nicole L. Rohr
Nicole L. Rohr

WARRANTY DEED—No. 102A

The Ohio Legal Blank Co. Cleveland
Publishers and Dealers Since 1883

Know all Men by these Presents

That KWM Real Estate Partners, LP, a limited partnership organized under RC 1782 with its principal place of business at 617 Canton Road, Carrollton, Ohio, by its general partner Kohler Real Estate Management Inc., the Grantor

who claim title by or through instrument, recorded in Volume 284, Page 35,

County Recorder's Office, for the consideration of Ten and NO/100

received to our full sa Dollars (\$ 10.00)

received to our full sa AUDRA M. BENNINGTON

Exhibit
A

the Grantee,

whose TAX MAILING ADDRESS will be 4151 Bay Road
Carrollton, Ohio 44615

do

Give, Grant, Bargain, Sell and Convey unto the said Grantee, her heirs and assigns, the following described premises, situated in the Township of Lee, County of Carroll and State of Ohio:

Being a part of the Northwest Quarter of Section 11 in Township 13, Range 5 and also being a part of Tract XII, a 9.732 acre tract (found by survey to contain 10.337 acres) conveyed to New Rocky Valley Farms, Inc. by deed in Volume 262, Page 302 of the Carroll County Deed Records and being more fully described as follows:

Beginning at a point in bay Road (County Road 27) said point being located the following two courses from the center of Section 11:

- 1) North 88 deg 14 min 55 sec West, 167.62 feet along the south line of the northwest quarter of Section 11 to an iron pin found in said road;
- 2) North 18 deg 57 min 55 sec West, 304.79 feet along said road to a point and passing on line an iron pin found at 139.93 feet;

Thence from this TRUE PLACE OF BEGINNING continuing with said road the following three courses:

- 1) North 18 deg 57 min 55 sec West, 113.12 feet to a point;
- 2) North 23 deg 53 min 05 sec West, 210.26 feet to a point;
- 3) North 44 deg 36 min 29 sec West, 214.80 feet to the southernmost corner of a 1.172 acre tract (256-43);

Thence leaving said road and with the east line of said 1.172 acre tract the following three courses:

- 1) North 15 deg 38 min 31 sec East, 51.50 feet to an iron pin set;
- 2) North 06 deg 03 min 21 sec West, 169.49 feet to an iron pin set;
- 3) North 36 deg 32 min 16 sec West, 177.91 feet to an iron pin set in the south line of a 67.36 acre tract (262-302) at the north-east corner of said 1.172 acre tract;

Thence with said south line, South 88 deg 34 min 29 sec East, 505.38 feet to an iron pin set; Thence leaving said south line, South 02 deg 29 min 28 sec West, 400.03 feet to an iron pin set; Thence South 14 deg 41 min 49 sec West, 414.58 feet to the TRUE PLACE OF BEGINNING containing 5.000 acres of land, more or less, and passing on line an iron pin set at 384.58 feet but subject to all legal highways, rights of way, easements and leases of record.

Survey and description by Ronald L. Smith, Registration No. 5324. All iron pins set were 5/8" by 30" with a cap stamped Ron Smith 5324. Bearings were oriented to an 8.989 acre tract (271-282)

SUBJECT TO RESTRICTIVE COVENANTS ON ATTACHED SCHEDULE A

CONVEYANCE EXAMINED
COMPLIES WITH R. C. SEC. 319.202
ENTERED FOR TRANSFER

JAN 21 1999

E. LEROY VAN HORNE,
AUDITOR

9900000358
Filed for Record in
CARROLL COUNTY, OHIO
PATRICIA OYER
On 01-21-1999 At 11:25 am.
WARRANTY DEED 18.00
Vol. 287 Pg. 193 - 195

INDEXED <input type="checkbox"/>	RANGED <input type="checkbox"/>
COMPARED <input checked="" type="checkbox"/>	MGN. ENTRY <input type="checkbox"/>

be the same more or less, but subject to all legal highways.

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Exhibit B

File No. 15-61913

SupplementFile No. **129469**

Borrower/Client	Wilson, Audra Mae				
Property Address	4151 Bay Rd SE				
City	Carrollton	County	Carroll	State	OH Zip Code 44615
Lender	Toby L. Rosen, Chapter 13 Trustee				

TO: Toby L. Rosen, Chapter 13 Trustee
400 Tuscarawas Street, West, Suite 400
Canton, Ohio 44702

FROM: Timothy R Wolfe/Wolfe Appraisal & Consulting, Inc.
RE: Audra Mae Wilson (also known as Audra Mae Bennington)
CASE #: 15-61913

I, Timothy R Wolfe, state that I have performed an appraisal of the fair market value of the following real estate:

4151 Bay Rd SE Carrollton
Parcel # 17-0000110.001

Based upon my inspection of the property, the following is a description of said property: The subject property consists of a 5.0 acre parcel with a 1404 square foot manufactured home over crawlspace. The home is of average quality and in overall average condition. Continuous perimeter wall has not been constructed for the foundation and windows and siding are in need of replacement. These items were also considered in final opinion of market value. Per Public records, the home was built in 1998 and has a room count of 5/3/2. Utilities are well water, septic system, and propane heat. Subject is located in Lee Township. Township is not zoned. Highest and best use is as-is. Property appears to be located within FEMA Flood Zone X. Flood data is provided by InterFlood and is not warranted by the Appraiser.

I have reviewed the following comparable sales in the area:

ADDRESS	SALE DATE	SALE PRICE
1. 6195 Pronto Rd SE, Amsterdam, OH 43903	01/21/2015	\$78,000
2. 8566 Memorial Rd NE, Kensington, OH 44427	12/31/2014	\$69,000
3. 6791 Tracy Rd SE, Uhrichsville, OH 44683	01/16/2015	\$59,900

All sales are closed sales located within similar rural neighborhoods.

The real estate tax value of the above property is \$81,090.

The Carroll County Auditor reports no recent transfers for the subject property.

Based upon the above market data, it is my opinion that the fair market value of the real estate is **\$60,000** as of: **10/05/2015**

The Cost Approach and the Income Approach were not necessary for credible value conclusion

Signature

Name Timothy R WolfeDate Signed 10/07/2015State Certification # 443724

Or State License #

State OH

State

Signature

Name

Date Signed

State Certification #

Or State License #

State

State